



612 Territorial Dr, Suite B, Bolingbrook, IL 60440 (800) 323-8462

Sales Order Terms and Conditions

(Revision: 01/01/2019)

The following terms and conditions of sale govern all sales of goods or services (collectively, "Goods") from **S.W. Anderson Company** or its affiliate ("Seller") to buyer ("Customer").

- 1. Governing/Controlling Terms.** The terms and conditions contained in Seller's Customer Credit Application (BCR96 rev-06) and in this document shall govern this transaction and, except as expressly provided herein, shall supersede any purchase order submitted to Seller by Customer. All other terms and conditions contained in any prior communication between Customer and Seller, oral or written, including, without limitation, Customer's purchase order, other than the identity of and quantity of the item(s) being purchased, are null and void and are hereby rejected and shall not be binding upon Seller. Customer shall have assented to all terms and conditions contained herein if all or any portion of the Goods described herein are shipped or an invoice is presented in connection with said Goods.
- 2. Prices.** All prices are subject to change by Seller without notice. If prices change, Customer agrees to accept the new prices. Blanket Purchase Orders allow control over quantity discounts, they do not guarantee an item price.
- 3. Payment Terms.** All accounts are due and payable based upon the terms stated on the applicable invoice of Seller and the remittance address reflected on those invoices. As collateral security for the payment of the purchase price of the Goods, Customer hereby grants to Seller a security interest in and to all of the right, title and interest of Customer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof. The security interest granted under this provision constitutes a purchase money security interest under the Uniform Commercial Code. Customer agrees to assist Seller in taking any action Seller deems necessary or appropriate to perfect and protect Seller's security interest, including the filing of any financing statements, continuation statements and other documents under the Uniform Commercial Code (or other similar laws) in effect in any jurisdiction with respect to the security interest created hereby.



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4. **Late Payment.** If Customer fails to make any payment to Seller when due, Customer's shop account and/or job accounts with Seller shall become immediately due and payable without notice or demand. Customer acknowledges and agrees that it may be charged one and one half percent (1 ½ %) per month as a service charge plus up to the maximum interest permitted by law on any unpaid balance that has not been paid by the date due, and Customer agrees to promptly pay said service charge and interest. Any portion of a month shall be deemed a full month for the purpose of calculating any service charge and interest. Waiver of any service charge or interest for any given month by Seller shall not be deemed a waiver of any future service charges or interest.

5. **Taxes.** Customer shall pay, in addition to the prices quoted, all taxes, including, without limitation, sales, use and excise, imposed by any present or future law on the sale or use of the Goods covered thereby, unless Customer provides Seller with an exemption certificate acceptable to the applicable taxing authorities. Any taxes which Seller may be required to pay or collect under any existing or future law with respect to the sale, purchase, delivery, storage, processing, use or consumption of any of the Goods sold hereunder shall be for the account of Customer, who shall promptly pay the amount thereof to Seller upon demand.

6. **Claims.** No claim for damages, defects, shortages or otherwise shall be valid unless received in writing by Seller within ten (10) days of delivery of Goods to Customer. Following such ten (10) day period, Customer shall be deemed to have irrevocably accepted the Goods if not accepted by Customer prior thereto. If the Goods are damaged or defective and the manufacturer acknowledges responsibility under its warranty or otherwise, Seller may, but shall not be required to (i) replace the damaged or defective Goods from inventory, if available, or (ii) allow Customer a credit for the amount of the purchase price of the Goods. Under no circumstances and in no event shall Seller be liable for personal injury, death or property damage, or any other loss, damage, labor, cost of replacement or repair, or special, exemplary, consequential, incidental, indirect, punitive or liquidated damages, losses, or expenses (whether or not based upon negligence), including lost profits, lost income, lost revenues, business interruption or lost business, even if Seller has been advised of the possibility of such damages. In no event shall Seller's responsibility to Customer exceed the purchase price of the Goods purchased.

7. **Special Orders.** Orders for Goods which Seller does not regularly stock may not be cancelled or returned (unless the manufacturer approves the return) for any reason after Seller has placed the order with the manufacturer. Special packing or handling requests by Customer shall be at

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Customer's expense. All Special Order quantities may vary by 10% from the order quantity. Items with shipped quantities within 10% of the order quantity are considered closed.

8. **Returned Goods.** No Goods shall be returned without Seller's prior written permission and Customer's proof of purchase. Returned Goods must be unused and in their original packaging. All returns are subject to freight, handling, and restocking charges. Special order and/or non/stock item returns are subject to manufacturers' approval and credit for such returns is contingent upon that approval. Customer's sole and exclusive remedy for Goods alleged to be defective shall be limited to the manufacturer's inspection and warranty, if any.

9. **Credits; Set-off.** Customer agrees that Seller will apply any credits issued to Customer against Customer's outstanding invoices. If Customer has no outstanding invoices, Seller will issue a refund upon Customer's written request. Customer shall not be permitted to set off any amounts or credits due Customer against any amount due Seller in connection with this transaction.

10. **Delivery; Back Orders.** Seller shall not be liable or responsible for any loss or damage due to any delays in delivery, or failure to deliver the Goods due to any circumstances beyond Seller's control, including, but not limited to fire, flood, earthquake or other casualty, accidents, transportation delays, labor disputes, civil disorders, governmental orders or actions, acts of war or terrorism, or inability to secure Goods from Seller's usual sources of supply. In no event shall Seller be liable for any special, exemplary, consequential, incidental, indirect, punitive or liquidated damages, losses, or expenses (whether or not based upon negligence), including lost profits, lost income, lost revenues, business interruption or lost business, even if Seller has been advised of the possibility of such damages. In no event shall Seller's liability to Customer and/or any third party exceed the price paid by Customer or such party for the specific Goods or portion of the Goods giving rise to the claim or cause of action. Back orders will be shipped as received unless Customer and Seller agree to different terms.

11. **Risk of Loss.** Unless otherwise agreed by the parties in writing, all Goods are shipped F.O.B. point of shipment. Risk of loss shall transfer to Customer upon tender of Goods to Customer or a common carrier. On shipments made directly to Customer from the manufacturer, the sale is complete and Seller's responsibility to Customer ends upon delivery to the common carrier. Claims for Goods damaged or lost in transit must be made by Customer directly to the carrier

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and Seller shall have no liability for such claims. Customer shall assume all risk and liability for all loss, damage or injury to any person or property resulting from the installation and/or use of the Goods.

12. **Warranty Disclaimer.** Seller warrants that it has title to the Goods sold. EXCEPT AS EXPRESSLY SET FORTH IN THIS PARAGRAPH, ALL GOODS AND/OR SERVICES PROVIDED BY SELLER AND ITS EMPLOYEES AND AGENTS ARE PROVIDED "AS IS," "WHERE IS," AND "WITH ALL FAULTS." SELLER MAKES NO, AND HEREBY DISCLAIMS, WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WHETHER IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES OF MERCHANTABILITY, SUITABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE WITH RESPECT TO THE GOODS REFERRED TO HEREIN. CUSTOMER'S SOLE AND EXCLUSIVE WARRANTY, IF ANY, IS THAT PROVIDED BY THE APPLICABLE THIRD PARTY MANUFACTURER, THE TERMS OF WHICH WILL BE FURNISHED UPON REQUEST.
13. **Indemnification.** Customer shall defend, indemnify and hold harmless Seller and its owners, officers, directors, employees, agents and advisors from and against any claim, loss, damage, suit, cause of action, liability, judgment or expense (including, without limitation, attorneys' fees and costs), resulting from, arising out of or in connection with any injury, disease or death of persons or damage to or loss of any property, or violation of any applicable laws or regulations resulting from or in connection with the sale, transport, installation or use of the Goods, whether based upon negligence, breach of warranty, strict liability in tort, contract, or any other theory of law. This paragraph shall survive the termination of this transaction indefinitely.
14. **Dispute Resolution/Venue.** Any dispute arising out of this transaction shall be resolved by litigation or binding arbitration ("Dispute Resolution") at Seller's sole option. Such Dispute Resolution shall be conducted at a location selected by Seller and in the event of binding arbitration, by an arbitration service selected by Seller. A single arbitrator shall preside over the arbitration, and the decision of the arbitrator shall be final and binding upon the parties. If the parties cannot agree upon a single arbitrator, the procedure of the arbitration service selected by Seller shall be used to select an arbitrator. All actions arising out of or related to this transaction or the Goods sold hereunder, regardless of form or theory of liability, must be brought against Seller within the applicable statutory period, but in no event more than one (1) year after the date of invoice.

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15. **Costs of Collection.** If Seller retains or employs attorneys or other agencies in order to secure payment of any sums due from Customer, or otherwise enforce the terms of this document, including, but not limited to, the filing of foreclosure actions on liens filed due to Customer's failure to make payment, Customer agrees to pay attorney and/or collection fees, costs, and any and all other related expenses in addition to all sums due.
16. **Authority; Personal Liability.** The person(s) executing this document on behalf of Customer hereby represents he/she has authority to execute this document on behalf of Customer and acknowledges if no such authority exists that he/she by executing this document becomes personally liable under its terms.
17. **Modification.** The terms and conditions contained herein may not be amended, modified, supplemented, superseded or otherwise altered in any way except by a writing signed by an authorized representative of both Customer and Seller.
18. **Non-waiver.** Seller's failure to insist upon the strict performance of any term or condition herein shall not be deemed a waiver of any of Seller's rights or remedies hereunder, nor of its right to insist upon the strict performance of the same or any other term herein in the future. No waiver of any term or condition hereunder shall be valid unless in writing and signed by an authorized representative of Seller.
19. **Severability.** If any term or provision hereof is held to be illegal, invalid or unenforceable under any present or future laws, regulations, or ordinances of any federal, state, or other government to which this transaction is subject, such term or provision shall be fully severable and the remaining terms and provisions herein shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable term or provision.
20. **Force Majeure.** Seller shall be excused for the period of any delay in the performance of any obligations when prevented from so doing by causes beyond its control, including without limitation, acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster or casualty), civil commotion, government sanction, blockage, embargo, labor disputes, strike, lockout, inability to obtain any material or services, war (declared or undeclared) or acts of terrorism.



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21. **Entire Agreement.** This document constitutes the entire, complete, and exclusive agreement between Customer and Seller with respect to the subject matter hereof and contains all the agreements and conditions of sale. No course of dealing or usage of the trade shall be applicable unless expressly incorporated herein.